UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

XAVIER TERRY, Plaintiff, v. L. BABCOCK, et al., Defendants.	NO. CV 15-9933-DSF(E) ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

For the reasons discussed below, the Complaint is dismissed with leave to amend. See 28 U.S.C. § 1915(e)(2)(B).

BACKGROUND

Plaintiff, a state prisoner incarcerated at the California Men's Colony ("CMC"), filed this pro se civil rights action pursuant to 42 U.S.C. section 1983 on December 29, 2015. Plaintiff alleges two CMC officials violated Plaintiff's rights under the First Amendment, the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. section 1997 et seq., and the Religious Land Use and Institutionalized

Persons Act of 2000, 42 U.S.C. § 2000cc-1 et seq. ("RLUIPA"). Defendants are G. Romans and L. Babcock, allegedly the principal and vice-principal, respectively, of the CMC Adult School, sued in their "private" and "public" capacities.

Plaintiff alleges that, on or about March 24, 2015, Plaintiff sent a "CDCR 22" form to Defendant Babcock requesting removal from an educational class "arbitrarily imposed" on Plaintiff (Complaint, ECF Dkt. No. 1, p. 4).[1] Plaintiff allegedly asserted that his compelled participation in the class was improper in light of a supposed learning disability and "firmly held spiritual convictions" (id.).

A copy of the referenced form, titled "Inmate/Parolee Request for Interview, Item or Service" and attached to the Complaint ("Inmate Request"), shows that Plaintiff alleged he had a learning disability and his participation in various education assignments "over many years" assertedly had not improved Plaintiff's academic scores (id., ECF Dkt. No. 1, p. 32). Plaintiff also asserted that he was a practicing Jehovah's Witness who, in accordance with his "firmly held spiritual convictions," assertedly was unable to be "a part of any educational class/program which does not include worship, and the timeless teachings of the Creator" (id.). In the Inmate Request, Plaintiff alleged that the California Department of Corrections and Rehabilitation ("CDCR") Department Operations Manual supposedly had declared that classes should be on an "open-exit basis" (id.). Plaintiff requested that he be issued a "Plateau Chrono" and removed

[1] Because the Complaint and attachments thereto do not bear consecutive page numbers, the Court uses the ECF pagination.

from education assignments permanently.

Defendant Babcock reportedly responded that: (1) Plaintiff assertedly had not had any TABE testing[2] although a 2015 "pretest" reportedly yielded a TABE score of 3.2; (2) Plaintiff allegedly would need to take a "post-TABE" to be considered to be at a plateau; and (3) Plaintiff allegedly would not be removed from education at that time because more data assertedly was required (id.). Plaintiff alleges that, "to this very day the Plaintiff has still 'not' been 'taken out of education'" (id.).

On or about April 29, 2015, Defendant Babcock allegedly "conducted a hearing" during which Plaintiff assertedly contended that prison officials were contractually obligated to comply with the "open-entry/open-exit" educational policy (id., ECF Dkt. No. 1, p. 5). Babcock allegedly rejected Plaintiff's argument that he was entitled to withdraw from education classes pursuant to this policy (id.). Defendant Babcock said she would have to do more research regarding the alleged "conflict with religion" (id.). Plaintiff alleges that Babcock "wilfully declined to adequately and effectively resolve the matter," which Babcock purportedly could have done by means of "a few keystrokes/mouse clicks" on the computer (id.).

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[2] State prison regulations define "TABE," or the "Test of Adult Basic Education," as "a test designed to assess reading, mathematics, language and spelling skills," as well as "basic skills in work-related contexts." Cal. Code of Regs., tit. 15, § 8000.

Plaintiff allegedly requested supervisor review (id., ECF Dkt. 1, p. 32). Defendant Romans allegedly conducted the review and wrote on the form that prison officials were "looking into the issue of [Plaintiff's] beliefs" (id.). Romans also allegedly wrote that the "open entry/open exit" policy existed to allow inmates to come and go in educational programs, because a traditional class schedule was "not appropriate for corrections" (id.).

On April 8, 2015, Plaintiff filed an inmate appeal (id., ECF Dkt. No. 1, pp. 20-21).[3] Plaintiff contended that the prison's educational program did not "include the teachings, understanding, knowledge and reverence re God Almighty" as purportedly required by his "firmly held spiritual convictions," and that according to Plaintiff's beliefs all education venues were required to "include the teachings, understanding, knowledge and reverence of God Almighty" (id., ECF Dkt. No. 1, p. 21). Plaintiff also contended he was entitled to withdraw from the educational program under the "open-exit" policy, and that sitting in class allegedly constituted cruel and unusual punishment because Plaintiff's medical condition purportedly prevented Plaintiff from sitting for long periods of time (id., ECF Dkt. No. 1, p. 22).

The Associate Warden denied the appeal at the first level of review, observing, inter alia, that "open-entry/open-exit programming" meant that the prison's educational program was competency-based, not sequential, due to constant turnover of inmates (id., ECF Dkt. No. 1,

[3] California prison regulations establish an inmate appeal procedure involving three levels of review. See Cal. Code of Regs, tit. 15, § 3084.7. The third and final level is with the CDCR Secretary. Id.

pp. 26-27). The Associate Warden indicated that attendance in an educational course was required until completion of the course by the earning of a high school diploma or GED certificate or removal by a classification committee, and that Plaintiff had a TABE reading score of 3.2 and had not earned the requisite diploma or GED certificate (id.). The Associate Warden also stated that the education department treated all inmates the same with respect to inmate religious beliefs, and that if there were special religious activities or services the religious leader would request the education department to release the inmate for that activity (id.).

Plaintiff appealed to the second level of review (id., ECF Dkt. NO. 1, p. 23). The Warden granted the request that the appeal be processed but otherwise denied the appeal on the same grounds as the first level denial (id., ECF Dkt. 1, pp. 28-30). The Warden added that Plaintiff's alleged request that all education venues "include the teachings, understanding, knowledge and reference of God Almighty" would not be addressed, deeming the request to be an improper attempt to expand the appeal (id.). The Warden further stated that, with respect to Plaintiff's alleged difficulty sitting, Plaintiff's teacher would allow Plaintiff proximity seating to facilitate Plaintiff's ability to sit, stand or move about the classroom as needed to alleviate any supposed discomfort from prolonged sitting (id.).

Plaintiff appealed to the third level of review (id., ECF Dkt. No. 1, p. 21). This appeal was denied on September 11, 2015, on the grounds that Plaintiff had failed to provide any evidence of his alleged medical condition or the accommodations allegedly necessary

for that condition, and that Plaintiff had failed to provide any evidence beyond his unsubstantiated testimony that the educational program conflicted with Plaintiff's religious beliefs (id., ECF Dkt. No. 1, pp. 24-25).

On November 9, 2015, Plaintiff received a Rules Violation Report for "Refusing Work Assignment" (id., ECF Dkt. No. 1, p. 39).[4] An educational program instructor reported that Plaintiff had refused to attend class, stating: "You know my medical condition; I can't sit in these chairs." (id.). At the hearing on November 15, 2015, Plaintiff pled "guilty with an explanation," stating "I enrolled in Out Patient school. I can't sit in the chairs due to my medical condition." (id., ECF Dkt. No. 1, p. 43). The hearing officer reportedly called the medical clinic on a speakerphone and learned that Plaintiff had no medical restrictions (id.). Plaintiff reportedly was found guilty and was assessed a 15-day credit loss (id., ECF Dkt. No. 1, p. 44).

The Complaint contains three claims for relief. In Claim I, Plaintiff alleges that Defendants violated the First Amendment, CRIPA and RLUIPA by forcing Plaintiff to attend an educational class the content of which allegedly did not comport with Plaintiff's spiritual beliefs (id., ECF Dkt. No. 1, pp. 4-7). Claim II alleges that Defendant Babcock exhibited deliberate indifference to Plaintiff's

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[4] California prison regulations require every "able-bodied" inmate to "work as assigned by department staff. . . ." Cal. Code of Regs., tit. 15, § 3040(a). A work assignment may include educational programs. Id. All CDCR academic programs must be "based on curriculum frameworks adopted by the Board of Education." Cal. Code of Regs, tit. 15, § 3220.2. Inmates may not "evade attendance or avoid performance" in assigned educational programs. Cal. Code of Regs., tit. 15, § 3041(a).

allegedly severe back pain by compelling Plaintiff to attend class (id., ECF Dkt. No. 1, p. 8). Claim III alleges that Defendants violated due process by compelling Plaintiff to attend class, purportedly in violation of the "open-entry/open-exit" regulation (id., ECF, Dkt. No. 1, pp. 9-10). In Claim III, Plaintiff also appears to allege that Defendants violated due process because the class Plaintiff was required to attend supposedly lacked any "useful knowledge" because of the absence of spiritual content (an allegation which appears to duplicate the allegations contained in Claim I) (id.). Claim III further alleges that Defendants purportedly subjected Plaintiff to involuntary servitude in supposed violation of the Thirteenth Amendment (id., ECF Dkt. No. 1, p. 10).

Plaintiff seeks an order prohibiting Defendants from compelling Plaintiff to attend CMC's educational classes, an order (apparently) compelling disclosure of certain insurance information, monetary payment pursuant to the "Uniform Bonding Code," and payment of fines allegedly pursuant to 18 U.S.C. section 241[5] (id., ECF Dkt No. 1, p. 11).

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DISCUSSION

[5] Section 241 is a criminal conspiracy statute for which there is no private right of action. See Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980).

I. Plaintiff May Not Sue Defendants for Damages in Their Official Capacities.

Plaintiff's allegation that he sues Defendants in their "public" capacities appears to indicate an intent to sue Defendants in their official capacities. Plaintiff may not sue state officials for damages in their official capacities. The Eleventh Amendment bars suits in federal court for money damages against state officials in their official capacities. See Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989); Krainski v. Nevada ex rel. Bd. of Regents of Nevada System of Higher Educ., 616 F.3d 963, 968 (9th Cir. 2010), cert. denied, 562 U.S. 1286 (2011).[6]

II. Plaintiff's Allegations That Defendants Violated His First Amendment Right Freely to Exercise His Religion Fail to State a Claim on Which Relief May be Granted.

Inmates "retain protections afforded by the First Amendment, including its directive that no law shall prohibit the free exercise of religion." O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987) (citation omitted). Generally, to state a claim for violation of the Free Exercise Clause of the First Amendment, a plaintiff must allege that the plaintiff's proffered belief is "sincerely held" and that the

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[6] The Eleventh Amendment does not bar suit against state officials in their official capacities for prospective declaratory or injunctive relief regarding allegedly unconstitutional state action. See Will v. Michigan Dept. of State Police, 491 U.S. at 71 n.10; Ex Parte Young, 209 U.S. 123, 159-60 (1908); Assoc. des Eleveurs de Canards et d'Oies due Quebec v. Harris, 729 F.3d 937, 943 (9th Cir. 2013), cert. denied, 135 S. Ct. 398 (2014).

claim is "rooted in religious belief, not in purely secular philosophical concerns." Walker v. Beard, 789 F.3d 1125, 1138 (9th Cir. 2015), cert. denied, ___ U.S. ___, 2015 WL 7692762 (Nov. 30, 2015) (citations and internal quotations omitted). For purposes of this screening only, the Court accepts as true Plaintiff's allegation that his alleged religious beliefs are sincerely held.[7]

However, an inmate's right to practice his or her religion is "necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security." Ashelman v. Wawrzaszek, 111 F.3d 674, 677 (9th Cir. 1997). The Court applies the test set forth in Turner v. Safley, 482 U.S. 78 (1987) ("Turner"), to Petitioner's First Amendment claims. See O'Lone v. Estate of Shabazz, 482 U.S. at 348-50 (approving application of Turner standards to prisoners' Free Exercise claims); Shakur v. Schriro, 514 F.3d 878, 883-84 (9th Cir. 2008) (same).

Under Turner, the Court considers: (1) whether the restriction has a logical connection to the legitimate government interests invoked to justify it; (2) whether there are alternative means of exercising the rights that remain open to the inmate; (3) the impact that accommodation of the asserted constitutional right will have on other inmates, guards, and institution resources; and (4) the presence or absence of alternatives that fully accommodate the inmate's rights

[7] The Court observes, however, that Plaintiff also reportedly asserted at various times, other, non-religious reasons for refusing to participate in the prison's educational program.

at de minimis cost to valid penological interests. Turner, 483 U.S. at 89-91.

The first Turner factor requires a determination whether there was a "legitimate penological interest that is rationally related to the disputed regulation." Shakur v. Schriro, 514 F.3d at 885. Prison officials have a legitimate penological interest in the security of the institution and in inmates' rehabilitation, including their compliance with program assignments. See O'Lone v. Estate of Shabazz, 482 U.S. at 348 (valid penological objectives include "rehabilitation of prisoners, and institutional security") (citations omitted); Mayweathers v. Newland, 258 F.3d 930, 938 (9th Cir. 2001) ("the government has a legitimate interest in making sure inmates attend their work and education assignments, and punishing unexcused absences is validly connected to the goal of high attendance").

Under the second Turner factor, the Court considers whether Plaintiff has "alternative means by which he can practice his religion" or is "denied all means of religious expression." Shakur v. Schriro, 514 F.3d at 886. Plaintiff's alleged inability to obtain an educational program personalized to his particular religious beliefs would not deny Plaintiff "all means of religious expression," or even deny Plaintiff the right to seek religious instruction outside the prison's secular educational program. See O'Lone v. Estate of Shabazz, 482 U.S. at 351-52 (prison work policy which prevented Islamic inmates from attending weekly Jumu'ah services did not deny inmates their ability to participate in other religious ceremonies or otherwise practice their religion); Mayweathers v. Newland, 258 F.3d

at 938 (same).

Under the third Turner factor, the Court considers the impact the accommodation would have on the institution, other inmates and the allocation of institution resources generally. See Shakur v. Schriro, 514 F.3d at 886. Establishing a religious study program consistent with Plaintiff's personal alleged religious beliefs could consume prison officials' time and resources and encourage other inmates to demand their own personalized study programs, thus potentially "exacerbat[in]g tensions and endanger[ing] guards." See Walker v. Beard, 789 F.3d at 1138-39 (accommodating prisoner who claimed his religion forbade sharing a cell with those not of the purported Aryan race, while not providing similar exemptions to inmates of other races and religions, "might exacerbate tensions within California prisons and endanger guards"). Exempting any prisoner who espouses a religion from participation in mandatory work and educational programs that do not include religious teaching would severely impact the viability of virtually all existing prison work and educational programs.

Finally, the fourth Turner factor requires consideration of "whether the existence of easy and obvious alternatives indicates that the regulation is an exaggerated response by prison officials." Hrdlicka v. Reniff, 631 F.3d 1044, 1054 (9th Cir. 2011), cert. denied, 132 S. Ct. 1544 (2012) (citation and internal quotations omitted). Requiring prison officials to set up a personalized educational program for Plaintiff containing religious content of his choice does not constitute an "easy and obvious" alternative. Apart from the apparent difficulty and impracticality of this alternative, the

state's establishment of a prison educational program rooted in a particular religion could threaten a violation of the First Amendment's Establishment Clause.

Accordingly, under Turner, Plaintiff's allegations that prison officials violated the First Amendment by refusing to provide Plaintiff an educational program personalized to Plaintiff's particular religious beliefs fail to state a claim on which relief may be granted.

III. Plaintiff's CRIPA Claim Lacks Merit.

CRIPA, as amended by the Prison Litigation Reform Act of 1995, (Pub. L. No. 104-134, 110 Stat. 1321), 42 U.S.C. § 1997e(a), contains, inter alia, provisions authorizing the United States Attorney General to initiate, or intervene in, a civil action against a State or state actor for violation of the rights of institutionalized persons, a prohibition against retaliation, an administrative exhaustion requirement, a screening provision and a limitation on damages for mental or emotional injury. Plaintiff does not indicate what provision of CRIPA Defendants assertedly violated. In any event, CRIPA provides no private right of action. See McRorie v. Shimoda, 795 F.2d 780, 782 n.3 (9th Cir. 1986); McDaniels v. Elfo, 2014 WL 2207458, at *2 (W.D. Wash. May 28, 2014).

IV. The Complaint Fails to State a Claim for Deliberate Indifference to Plaintiff's Alleged Back Pain.

Prison officials can violate a prisoner's Eighth Amendment right to be free of cruel and unusual punishment if they are deliberately indifferent to the prisoner's serious medical needs. See Farmer v. Brennan, 511 U.S. 825, 837 (1994); Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997). "A 'serious' medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain.'" McGuckin v. Smith, 974 F.2d at 1059 (citation omitted); see also Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (examples of "serious medical needs" include "a medical condition that significantly affects an individual's daily activities," and "the existence of chronic and substantial pain"; citation and internal quotations omitted).

To state a claim for deliberate indifference, a prisoner must allege facts showing that prison officials knew of and disregarded an excessive risk to the prisoner's health or safety. Farmer v. Brennan, 511 U.S. at 837; see Ashcroft v. Iqbal, 556 U.S. 662, 678, 686 (2009). The official must have been aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and must have also drawn the inference. Farmer v. Brennan, 511 U.S. at 837. Thus, inadequate treatment due to accident, mistake, inadvertence, or even gross negligence does not amount to a constitutional violation. Estelle v. Gamble, 429 U.S. at 105-06; Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004). "[A]n official's failure to alleviate a significant risk that he should have

perceived but did not, while no cause for commendation, cannot . . . be condemned as the infliction of punishment." Farmer v. Brennan, 511 U.S. at 838.

Plaintiff has failed to allege facts showing that Defendant Babcock exhibited deliberate indifference to Plaintiff's alleged back pain. The Inmate Request form attached to the Complaint, which Plaintiff allegedly sent to Defendant Babcock, did not assert that Plaintiff suffered from back pain so severe that he could not attend class (see Complaint, ECF Dkt.1, p. 32). While Plaintiff's appeal arguably did contain this assertion (see id., ECF Dkt. 1, p. 22), and it appears Defendant Babcock interviewed Plaintiff in connection with that appeal (see id., ECF Dkt. 1, p. 26), it also appears from the report of the subsequent disciplinary hearing that Plaintiff had no medical documentation of any condition which would prevent him from attending class. The Complaint fails to allege that Babcock knew of, and subjectively disregarded, any serious medical need of Plaintiff.[8]

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V. The Complaint Fails to State a Due Process or Thirteenth Amendment Claim.

Plaintiff's allegations that Defendants purportedly violated due

[8] Furthermore, the Warden advised Plaintiff that the instructor could make accommodations (see id., ECF Dkt. No. 1, p. 30), and Plaintiff alleges no facts suggesting that the proposed accommodations were unreasonable.

process by assertedly transgressing the "open-entry/open-exit" regulation do not state a cognizable section 1983 claim. It is axiomatic that, to state a claim under 42 U.S.C. section 1983, the plaintiff must allege a violation of a right secured by the federal constitution or federal law. See Parratt v. Taylor, 451 U.S. 527, 535 (1982), overruled on other grounds, Daniels v. Williams, 474 U.S. 327 (1986); Haygood v. Younger, 769 F.2d 1350, 1353 (9th Cir. 1985), cert. denied, 478 U.S. 1020 (1986). Mere allegations of state law violations do not suffice to plead a section 1983 claim. See Cornejo v. County of San Diego, 504 F.3d 853, 855 n.2 (9th Cir. 2007) ("a claim for violation of state law is not cognizable under § 1983") (citation omitted); Lowell v. Poway Unif. Sch. Dist., 90 F.3d 367, 370-71 (9th Cir. 1996) ("To the extent that the violation of a state law amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the federal Constitution, Section 1983 offers no redress"; citation omitted).

To the extent Plaintiff asserts a Thirteenth Amendment claim, any such claim lacks merit. "[T]he Thirteenth Amendment does not apply where prisoners are required to work in accordance with prison rules." Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994).

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ORDER

For the foregoing reasons, the Complaint is dismissed with leave to amend. If Plaintiff still wishes to pursue this action, he is

granted thirty (30) days from the date of this Order within which to file a First Amended Complaint. The First Amended Complaint shall be complete in itself. It shall not refer in any manner to any prior complaint. Failure to file timely a First Amended Complaint may result in the dismissal of this action. See Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002), cert. denied, 538 U.S. 909 (2003) (court may dismiss action for failure to follow court order); Simon v. Value Behavioral Health, Inc., 208 F.3d 1073, 1084 (9th Cir.), amended, 234 F.3d 428 (9th Cir. 2000), cert. denied, 531 U.S. 1104 (2001), overruled on other grounds, Odom v. Microsoft Corp., 486 F.3d 541 (9th Cir.), cert. denied, 552 U.S. 985 (2007) (affirming dismissal without leave to amend where plaintiff failed to correct deficiencies in complaint, where court had afforded plaintiff opportunities to do so, and where court had given plaintiff notice of the substantive

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problems with his claims); Plumeau v. School District #40, County of Yamhill, 130 F.3d 432, 439 (9th Cir. 1997) (denial of leave to amend appropriate where further amendment would be futile).

IT IS SO ORDERED.

DATED: 1/19/16

DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

PRESENTED this 11th day of January, 2016 by:

/S/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE